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No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

HAROLD RAUCH, ESQUIRE
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Amicus Curiae

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT Of PETITIONER

Now comes Harold Rauch, Esq., a duly licensed California attorney for 25 years. He applies to obtain leave of Court to file the attached brief as Amicus Curiae in support of Petitioner and this Court hearing her Petition.

This motion is being filed as

opposing party, Supreme Judicial Court, and Bar Counsel have not returned the written consent required of United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus is interested in the issues presented as a lawyer in California affected by the grant or denial of this Petition. He wishes to bring to the Court's attention relevant matter which has not already been brought to its attention and which has not been raised by the parties. That relevant information concerns the need for this Court to void the State Bar Court of the California State Bar Association by reason of its exemption from all state law, including all law applicable to

other courts, and its running a press department issuing press releases which impair fair hearings in violation of this Court's holding in Sheppard v. Maxwell 384 U.S. 333, 86 S. Ct. 1507, 16 L. Ed. 2d. 600 (1966).

Pursuant to United States Supreme Court rule 37, this Amicus brief should be dispositive of the issue of whether the principles of Comity apply to a State Bar Court of the California State Bar Association, a private organization. Amicus requests the Petition be granted so that attorneys are not wrongly deprived of their right to work.

RESPECTFULLY SUBMITTED,

/S/

HAROLD RAUCH, ESQUIRE (Pro Se)
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408-446-3960, Amicus Curiae

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QUESTIONS PRESENTED

1. Are state statutes which create a State Bar Court, in effect, a denial of equal protection of the law to California attorneys when that Court has exempted itself from all state law ?

2. Is due process of law violated by a State Bar Court when Court employees and the prosecutors use Court-owned press releases to issue advance press releases against the accuseds they are obligated to try objectively, fairly and impartially ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

BETSEY WARREN LEBBOS, ESQUIRE
P.O. Box 40
New Almaden, Ca. 95042-0040

Petitioner Pro Se

HON. PAUL J. LIACOS
Senior Justice
Supreme Judicial Court of The Commonwealth of Massachusetts
Room 1412, Court House
Boston, MA. 02108

Respondent Court

DANIEL J. KLUBOCK, ESQ.
Bar Counsel
Board of Bar Overseers
75 Federal Street
Boston, Mass. 02110

Respondent Bar Counsel

TABLE OF AUTHORITIES

CASES :

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AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

I.

INTEREST OF AMICUS

Your Petitioner is a duly licensed California attorney for 25 years and has known the Petitioner Attorney for 17 years.

Amicus compared the actual charges filed with the press reports. The actual press releases were issued anonymously by the State Bar prosecutor. All later news reports copied the state bar's press releases and not the actual charges. There was virtually no similarity between the actual charges and the news releases.

The press releases were substantially distorted. There was no proof to support any of the prosecutor's press releases or charges. In fact, his claims did not relate to the actual charges. Most of the evidence actually refuted all the charges, as Amicus describes in the attached Amicus. There was no evidence to support the charges.

Yet Amicus has read articles the State Bar published claiming the Petitioner was found guilty of things not even charged.

The judges and prosecutors of the State Bar Court are co-employees and are allowed to issue their own press releases. Dues of California attorneys permitted to practice in California are used to run the full-time Press Department, effectively defaming attorneys on trial or before charges are filed or proceedings commenced. Businesses and income are thereby destroyed in advance of charges being filed so that the attorney can not economically or emotionally defend themselves.

ARGUMENT

I.
The statutes creating an alleged State Bar Court, Judges, and Involuntary Inactivity are Unconstitutional as a denial of equal protection of the law

All references hereinafter, unless otherwise specified, are to sections of Calfornia's Business and Professions Code.

The State Bar, its alleged " Judges " and " State Bar Court " have exempted themselves from the Rules of Professional Conduct, Judicial Code, disciplinary jurisdiction of the Commission on Judicial Performance, rule-making authority of the Judicial Council, state law and the requirements of public election, accountability, and state audit applicable to all other judges and courts in the

state. ..Section 6001.

It appears irrational and arbitrary to allow state bar court judges to exempt themselves from minimum standards of behavior.

The State Bar's rules of procedure, in effect when the Lebbos (disciplinary) matter was heard, concerning press releases by the state bar or its State Bar Court, or its alleged judges', were not complied with in the Lebbos case and violated the standards set forth in Sheppard v. Maxwell, 384 U.S.333, 86 S.Ct. 1507, 16 L. Ed. 2d. 600 (1966). Rule 240. (10)

The state bar releases deviated from the actual charges filed. They contain additional but derogatory claims not contained in charges filed and the status of

the case.. the extent of the publicity indicates the state bar issued at least 5 to 10....

In light of the state bar and alleged state bar court's intern-

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(10) The Lebbos' press releases were not issued by the President of the state bar...There was no action of the President with concurrence of two Vice-Presidents. There was no general dissemination to the Public until after the state bar issued its releases...there appears to be substantial distortion in the state bar's press releases in the Lebbos case... March 3, 1988 is an official State Bar Press release issued before the attorney was served. All were issued Ex Parte. There was no prior notice to the attorney nor service of process. There was no required probable cause hearing. None of (their) press releases disclosed they were defendants in pending civil litigation filed by Lebbos. The news releases misstated the charges. They alleged charges that were, in fact, never filed. They claimed they had a State Bar Court. Their news releases concealed the fact they were brought at the request of Lebbos'opposing counsel and party defendants in Lebbos v. Judges, Santa Clara
(continued next page)

al rules which permit the prose-

ecutor to wage a news campaign

defaming an attorney with false

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(10) (continued from prior page)

Superior Court,(1989) 883 F.2d.810 (Ninth). The March release claimed, " In three of the charges Ms. Lebbos is accused of filing altered documents with the Santa Clara Superior Court." The Notice shows only one charge. However, this one charge, Count 3 (1), the prosecutor dismissed the first day of hearing. The file shows the filing was not of an altered document. It was an excerpted transcript. An excerpted transcript is not an altered one ... The press release also claimed, " She also is accused of misappropriating funds." The bank records showed no funds moved... However, the inference of the press release is that there were multiple charges of misappropriating funds, when there was one, which became none as it was dismissed by the referee. Funds were never touched. Either the bank records were never read or if read,the misstatements were intentional. The dismissal of the one misappropriation charge did not occur until the state bar issued for ten months its false " Misappropriations " releases. The

(continued next page)

press releases and which permit any state bar person to issue such news

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(10) (continued from prior page)

release claimed, " She also is accused of concealing assets from a creditor. " The charge was she concealed assets in her statements at a deposition on a particular date... The deposition was never submitted for review. It was never complete or completed. The state bar had no evidence of concealed assets, just the oral hearsay months later from an embezzling lawyer. (Ex.VVVV). The release claimed, " she is accused of resisting efforts to transfer her cases away from a judge who had recused himself." There is no rule of professional conduct involved. An attorney may waive a judge's recusal. The charge is she appeared in a courtroom. The Public may do so. The release claimed, " she is accused of filing a lawsuit without the alleged client's knowledge or consent." The client filed an affidavit. She said she did not file such a charge, did give consent, did so testify, and was never contacted by the state bar either before or after the charge was filed. The release claimed," several of the counts allege unethical behavior surroun-

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releases with the state bar 's News Department, which occurred in the Lebbos case, the State Bar

(10) (continued from prior page)

ding Lebbos' unsuccessful efforts to disqualify all Santa Clara County judges from all her cases. The one charge claimed a denial of a recusal on one case for one client precluded the attorney filing same or similar disqualifications for other clients concerning other judges ... The claim the attorney's efforts were " unsuccessful," was in no charge. The claim the attorney had filed to disqualify all judges from all her cases was in no charge. The release claimed, " She is also accused of making false charges against some of the judges and other persons involved in her cases." There is no such charge. One charge alleged she made false statements. There is a difference between making a charge against a judge and supposedly making a false statement. The later press release..claimed a State Bar Court referee acted. He had not done so. The referee's letter says he had not yet acted. However, the press release claimed she " is guilty of numerous charges of ethical misconduct." The letter (continued next page)

Court is void for passing rules and implementing them so as to violate the United States Supreme Court Sheppard, supra decision and violating due process of law. (11)

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(10) (continued from prior page)

never, in fact, said what the charges were. The News Release then, once again, misstates the charges. It then falsely claimed that she is found guilty of over 20 violations of Business and Professions Code section 6068 (f). The letter never addressed any violations, any code section or any number. The Press wrote their articles, not from the letter, but from the false State Bar press release....no findings are made by the state bar, only by the admitting court.

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(11)

Judicial Code of Conduct Canon 3 A (6) and the ABA Code DR-7-107 prohibit such news releases. The ABA Standards for Criminal Justice, 2, s. 8.1.1 (a) provides' A lawyer shall not release or authorize the release of information or opinion for dissemination by any means of public communication if such dissemination would pose a clear and present danger to the fairness of the trial.'

Charges such as recusing judges, filing lawsuits, appearing in a courtroom, being ' offensive ' as occurred in the Lebbos case, are frivolous.

But, these were the charges.

Such efforts by attorneys on behalf of clients or themselves are proof of professional competence and are, in fact, proper conduct. An attorney is under a duty to recuse a judge when he believes the judge may not be fair and impartial to a client's interest. An attorney must appear in the courtroom where his matter is assigned regardless of whether a particular judge sitting has disqualified himself from other cases or not. Alternatively, if it is in the best interests of a client to

proceed even with a judge who has recused himself on similar cases, then it is the attorney's duty to seek to waive that judge's recusal. Charges of professional misconduct for so doing effectively muzzle attorneys and prevent justice from being obtained.

CONCLUSION

Amicus requests this Honorable Court hear the Petition. A grave injustice has occurred to a truly dedicated and honorable attorney.

She was excoriated in the press by false and defamatory press releases when the State bar had no evidence to support any charge.

Allowing this association to have an alleged Court with such arbitrary powers denies an accused a fair and impartial proceeding which is a denial of due process

of law as occurred in the Petitioner's case.

Amicus therefore requests the Petition be entertained so that such serious injustices do not continue to California attorneys.

RESPECTFULLY SUBMITTED,

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Amicus Curiae

VERIFICATION

I have read and prepared the foregoing Amicus Curiae Brief for Petitioner and Motion and declare under penalty of perjury that it's contents are true and correct, based on my own personal knowledge, information, and belief, and this Verification is executed this day of November, 1990 1989 at San Jose, California.

RESPECTFULLY SUBMITTED,

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